Labor’s weapon, the most potent and at times the most devastating in the economic arsenal, is its right to strike. There was a time under the common law when the strike, even if peaceably pursued, was not canonized as it is today. The right of the individual to quit has always been recognized as a fundamental personal right. But to quit in concert with others pursuant to agreement for the purpose of producing injury or destruction to the trade or business of another, and thus to compel the employer to submit to the demands of his employees, was held until recently in England and at an early day in some of our states to involve an unlawful conspiracy which carried not only liability in the civil courts but penalty and punishment for violation of the criminal law.

It took the Conspiracy and Protection of Property Act, passed by Parliament in 1875, to establish conclusively in England the principle that a strike conducted without unlawful acts is not punishable as a crime. Although in this country for more than a century juries have generally refused to convict members of labor organizations as conspirators guilty of committing a crime, the American courts have applied to the acts of labor unions the English common law of conspiracy as the basis of recovery of damages against unions and their members and of granting in-
junctions against strikes. However, as early as 1842 the Massachusetts court, in a celebrated case still frequently referred to, speaking by Chief Justice Shaw, not only recognized that an association of laborers for the purpose of advancing their common trade interest was not illegal, but went so far as to hold in effect that the purpose of the combination to enforce a closed shop did not make it unlawful. The case arose under indictments for common law conspiracies. The principal point ruled, after a review of all the principal English and American decisions, is thus stated in one of the headnotes:

"An indictment alleged that the defendants, being journeymen boot-makers, unlawfully &c. confederated and formed themselves into a club, and agreed together not to work for any master boot-maker or other person, who should employ any journeyman, or other workman, who should not be a member of said club, after notice given to such master or other person to discharge such workman. Held, that there was no sufficient averment of any unlawful purpose or means."

Thus at this early day the principle was announced, which still obtains, that the legality of the combination depends upon its motives and the means used to carry its purposes into effect.

The principles announced by Chief Justice Shaw in the Hunt case came to be accepted by most of the courts of this country. It is noteworthy that it required no statute here, as it did in England, to establish the doctrine that a labor union is not per se unlawful as a common law conspiracy, and that concerted cessation of work by the employees of any employer, i.e., a strike, for the purpose of compelling recognition of the demands of the union, if these are not contrary to established law, constitutes no breach of the law, civil or criminal, provided, of course, the strike be lawfully conducted without breach of the peace or injury to property.

Labor's right to bargain collectively through its chosen representatives and its rights to enforce its demands by striking when less drastic means fail, is now firmly established and recognized by employers, the public, and the courts, state and federal. But this right of strike is not without qualification.

3 The English Trade Disputes and Trade Unions Act of 1927 declares that "... any strike is illegal if it (1) has any object other than or in addition to the furtherance of a trade dispute within the trade or industry in which the strikers are engaged; and (2) is a strike designed or calculated to coerce the government either directly or by inflicting hardship upon the community."
LIMITATIONS UPON THE RIGHT TO STRIKE

1. Sympathetic Strikes

One limitation upon the use of the strike, generally recognized in most jurisdictions including the Supreme Court of the United States, is that if the purpose of the strike is to injure an employer of labor with whom the organization has no trade dispute, the strike is illegal. Thus it is generally held that sympathetic strikes are an illegal interference with the rights of others. The underlying principle was well stated by the Massachusetts court (which, as above stated, was one of the earliest of our courts to recognize the right to strike) in a case in which the court said that the strike involved had an element in it like that of a sympathetic strike, a boycott or a black listing:

"... In our opinion organized labor's right of coercion and compulsion is limited to strikes against persons with whom the organization has a trade dispute; or to put it in another way, we are of opinion that a strike against A, with whom the strikers have no trade dispute, to compel A to force B to yield to the strikers' demands, is an unjustifiable interference with the right of A to pursue his calling as he thinks best."  

Closely allied to the sympathetic strike is the boycott. The landmark in the law of boycotts is the decision of the Supreme Court of the United States in the Danbury Hatters cases. In Loewe v. Lawlor, 6 (which grew out of the notorious Danbury Hatters strike) the Supreme Court held that a combination to boycott plaintiff's interstate trade in hats was within the scope of the Sherman Anti-Trust Act, for violation of which the defendants were later held liable for threefold damages under Section 7 of that Act in Lawlor v. Loewe, 6 in a unanimous opinion by Mr. Justice Holmes.

A storm of protest from the heads of the great labor organizations arose because of this decision. Organized labor was powerful enough to secure the passage of the Clayton Amendment to the Sherman Act, the avowed purpose of which was to nullify the

It amends the picketing provision of former acts by making picketing unlawful where persons attend in such numbers or act in such manner as to be calculated to intimidate any person in the house or place being picketed or to obstruct entrance to the house or place being picketed or to lead to a breach of the peace. (Italics supplied.)

5 208 U. S. 274, 28 S. Ct. 801 (1908).
decision and to place labor organizations beyond the reach of the anti-trust laws,—a pious purpose which failed of accomplishment, as the Supreme Court in the American Steel Foundries case, and others following it, held that the Clayton Amendment assumed a strike for lawful ends conducted by lawful means and that it furnished no immunity to striking labor organizations to destroy property or breach the peace, as will hereafter be noted.

2. Strikes in Employments Affected by the Public Interest

Another limitation now generally recognized is that the character of the service affects the right to strike, and that where the employment is "affected with a public interest," limitations are imposed which do not obtain in private employments. One of the early cases in which the question was considered is Arthur v. Oakes, in which Mr. Justice Harlan, sitting as a circuit judge of the seventh circuit, held that in the absence of legislation to the contrary, the right of one in the service of a quasi-public corporation—the Northern Pacific Railroad Company—to withdraw from such service at such time as he sees fit, must be deemed so far absolute that no court of equity will compel him against his will to remain in such service, notwithstanding the fact that such quitting shows a reckless disregard of his contract of employment and the convenience and interests of both employer and the public. The learned justice further held, however, that any combination or conspiracy upon the part of employees would be illegal the object of which was to cripple the property of the railroad or embarrass its operation, either by rendering the property unfit for use or by using wrongful methods to cause employees to quit or to prevent or deter others from entering the service in place of those leaving it; and that a combination or conspiracy between two or more persons to accomplish such purpose is unlawful and in proper case may be enjoined. The court refused to consider whether the provisions of the Sherman Anti-Trust Act were applicable, and rested its decision "upon the general principles that control the exercise of jurisdiction by courts of equity."

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7 American Steel Foundries v. Tri-City Central Trades Council, 257 U. S. 184, 42 S. Ct. 72 (1921).
8 63 Fed. 310 (C. C. A. 7th, 1894).
9 The court adopts the definition of a strike given by Sir James Hannen in Farrer v. Close, L. R. 4 Q. B. 602 (1869): "I am, however, of opinion that strikes are not necessarily illegal. A strike is properly defined as 'a simultaneous cessation of work on the part of the workmen,' and its legality or illegality must depend on the means by which it is enforced, and on its objects."
The reason that an exception is recognized in the case of employment affected with a public interest is, of course, that in such employments not only the rights of the employer and the employees but also the paramount rights of the public are involved. The great opinion of Mr. Justice Brewer, speaking for a unanimous court in the Debs case, still stands a bulwark for the protection of the public right. The case grew out of a strike of the employees of the Pullman Palace Car Company in Chicago. An injunction was granted by the lower court restraining the striking defendants from interfering with the business of any of the railroads as common carriers of passengers and freight between the states, or obstructing mail or express trains, and from attempting to induce or compel employees of any of the railroads to refuse or fail to perform their duties. Mr. Justice Brewer answered the contention of immunity of the strikers from interference by injunction in vigorous terms:

".... If a State, with its recognized powers of sovereignty is impotent to obstruct interstate commerce, can it be that any mere voluntary association of individuals within the limits of that State has a power which the State itself does not possess?"\(^{10}\)

The same principle was recognized by the Supreme Court in upholding the Adamson Eight-Hour Act in Wilson v. New,\(^ {11}\) in President Wilson's day, where the majority held that whatever may be the right of employees engaged in private business by concert of action to agree with others to leave their employment in the event their demands are not granted, "such rights are necessarily subject to limitation when employment is accepted in a business charged with the public interest," namely, the running of the railway systems of the country. The Solicitor General, John W. Davis, argued that power was inherent in Congress to regulate not only hours of service of employees engaged in interstate commerce, but also to regulate and settle disputes as to rate of wages between the carriers and their laborers, which, if not regulated by Congress, would leave the public helpless. Chief Justice White, delivering the majority opinion, wrote:

"We are of opinion that the reasons stated conclusively establish that from the point of view of inherent power the act which is before us was clearly within the legislative power

\(^{10}\) In re Debs, 158 U. S. 564, 581, 15 S. Ct. 900 (1895).
\(^{11}\) 243 U. S. 332, 37 S. Ct. 298 (1917).
of Congress to adopt, and that in substance and effect it amounted to an exertion of its authority under the circumstances disclosed to compulsorily arbitrate the dispute between the parties by establishing as to the subject matter of that dispute a legislative standard of wages operative and binding as a matter of law upon the parties...." (Justices Day, Pitney, Van Devanter and McReynolds dissenting.)

The Boston police strike of 1919 furnished a historic application of limitation imposed upon the right to strike by the public nature of the employment. It will be recalled on that occasion Calvin Coolidge, then Governor of Massachusetts, in a telegram to Samuel Gompers, then President of the American Federation of Labor, announced in language that received the endorsement of the country, "There is no right to strike against the public safety by anybody at any time anywhere."

While President Wilson was able to avert threatened railroad strikes in 1916 by urging the passage of the Adamson Eight-Hour Law for railway employees, he was not so fortunate in dealing with the United Mine Workers of America. This powerful organization in the latter part of 1919, notwithstanding the existence of wage contracts made in 1917, to run until the end of the war but not beyond April 1, 1920, demanded wage increases upon the ground that the contracts had terminated notwithstanding the continuance of a technical state of war. The operators refused the demands of the union. Thereupon the union officials called a nation-wide strike for the first of November. This was enjoined at the direction of the President by the Attorney General of the United States in the United States District Court at Indianapolis. The situation was succinctly stated in a letter written by President Wilson to Mr. Robinson on December 19, 1919, appointing him a member of the Bituminous Coal Commission, created for the purpose of settling the strike. After referring to the unavailing efforts made through the Secretary of Labor to induce the union officials to keep its members at work pending arbitration, the President said:

"... on October 25, 1919, I issued a statement in which I said that a strike in the circumstances therein described 'is not only unjustifiable, it is unlawful.' Despite my urgent appeals that the men remain at work, the officers of the United Mine Workers of America rejected all the proposals for a

12 Id. at 351. (Italics supplied.)
peaceful and ordinary adjustment and declared that the strike would go on. Accordingly, at my direction, the Attorney General filed a bill in equity in the United States District Court at Indianapolis, praying for an injunction to restrain the officers of the United Mine Workers of America from doing any act in furtherance of the strike. A restraining order was issued by the court, followed by a writ of temporary injunction on November 8, 1919, in which the defendants were commanded to cancel and revoke the strike orders therefore issued. These strike orders were accordingly revoked in a form approved by the court, but the men did not return to work in sufficiently large numbers to bring about a production of coal anywhere approaching normal."

The strike continued despite the injunction of Judge Anderson. The officials and leaders of the United Mine Workers were summoned to appear before Judge Anderson at Indianapolis on December 9th in answer to rules charging them with contempt of that court in not obeying its order to stop the strike. On December 6th, three days before the date for the hearing of the contempt charges, an agreement was made between A. Mitchell Palmer, Attorney General of the United States, and John L. Lewis, President of the United Mine Workers of America, with the approval of President Wilson, for the return of the miners to work with a fourteen per cent increase in wages and the appointment of a commission to consider further questions relating to wages, working conditions, profits and prices.

Time does not permit discussion of the decision of the Circuit Court of Appeals for the Fourth Circuit in 1927 in the twelve cases that went up from the District Court of the United States for the Southern District of West Virginia in which injunctions against the United Mine Workers of America were sustained, restraining it, its officers and members from interfering with the business of the 316 coal companies then operating on a non-union basis in Southern West Virginia, on the ground that such interference was pursuant to a conspiracy in restraint of interstate trade in violation of the Sherman Act. These injunctions were the aftermath of the notorious armed marches on Logan in September, 1919, and August, 1921. Although the Supreme Court of the United States refused certiorari to review the opinion of the Circuit Court of Appeals for the Fourth Circuit, few decisions of recent years

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have been the subject of more abuse by labor leaders and politicians, wholly unjustified, than this one. In every congressional investigation of the labor situation since, the record has contained references to the "yellow dog contract" upheld by this opinion and the restraints which it imposed upon the right to strike. Acts of Congress have been specifically leveled against it. In fact, the decision of the circuit court in the Red Jacket cases went no further than the Supreme Court had gone in the Hitchman case,\textsuperscript{14} the Coronado cases,\textsuperscript{16} and other decisions, as evidenced by its refusal to grant certiorari.

\textbf{FEDERAL LAWS PROTECTING THE RIGHT TO STRIKE}

The Clayton Act of 1914\textsuperscript{18} amended the Sherman Anti-Trust Act by providing that labor organizations should not "be held or construed to be illegal combinations or conspiracies in restraint of trade under the anti-trust laws." The Clayton Act also forbade issuance of injunctions by the federal courts "in any case between an employer and employees" to prevent employees from ceasing work, whether singly or in concert, from peaceably persuading others to abstain from working, from "ceasing to patronize or employ" (conducting boycotts), and from doing other acts which might lawfully be done in the absence of a labor dispute. A proviso in the law permitted injunctions to prevent irreparable injury to property rights for which there was no adequate remedy at law. Construing the act, the Supreme Court held that it introduced no new principle, but was merely declaratory of what has always been the best practice in the federal courts controlling the granting of injunctions, and that it still left jurisdiction in such courts to restrain strikes which attempted by violence or threats of injury to life or property to enforce the demands of labor.\textsuperscript{17}

Dissatisfaction of labor with the operation of the Clayton Act led to the enactment in 1932 of the more drastic Norris-La Guardia Anti-Injunction Act.\textsuperscript{18} This act, after declaring the public policy of the United States in labor matters, in terms invalidated contracts of employment by which the employee agreed not to join

\textsuperscript{14} Hitchman Coal & Coke Co. v. Mitchell, 245 U. S. 229, 38 S. Ct. 65 (1917).
\textsuperscript{15} United Mine Workers v. Coronado Coal Co., 259 U. S. 344, 42 S. Ct. 570 (1921), and 268 U. S. 295, 45 S. Ct. 551 (1925).
\textsuperscript{16} 38 Stat. 788 (1914), 9 F. C. A. Tit. 29, § 52.
\textsuperscript{17} American Steel Foundries v. Tri-City Central Trades Council, 257 U. S. 184, 42 S. Ct. 72 (1921).
\textsuperscript{18} 47 Stat. 70 (1932), 9 F. C. A. Tit. 29, §§ 101-115.
any labor organization, or to "withdraw" if he became a member. It destroyed jurisdiction in any court of the United States to enjoin the doing of enumerated acts growing out of any labor dispute, including the "ceasing or refusing to perform any work or to remain in any relation of employment." It limited the jurisdiction of the federal courts to issue injunctions in cases growing out of labor disputes to those where it appeared, after hearing the testimony of witnesses in open court and findings of fact by the court, that the unlawful acts threatened will be continued unless restrained, with the result that substantial and irreparable injury to complainant's property will follow; that greater injury will be inflicted upon complainant by denial of relief than will be inflicted upon defendants by the granting of relief; that complainant has no adequate remedy at law; and that the public officers charged with the duty of protecting complainant's property are unwilling or unable to furnish adequate protection.

Section 7(a) of the National Industrial Recovery Act10 declared in terms the right of employees to organize and to bargain collectively through representatives of their own choosing, but did not, like its successor, the National Labor Relations Act,20 expressly recognize the right to strike.

It may be mentioned in passing that the Bituminous Coal Act of 193721 (Guffey-Vinson Act), while omitting the labor provisions that caused the downfall of the original Guffey Act of 1935, contains in Section 9 a declaration of the public policy of the United States which includes the right of mine workers to bargain collectively, denies to coal producers the right to discharge or discriminate against employees for the exercise of such rights, and provides that no employee shall be required as a condition of employment to join any association for collective bargaining in the management of which the producer has any share of direction or control.

The influence of labor in the halls of Congress, indicated by the provisions of the Acts to which reference has been made, culminated in the National Labor Relations Act, more familiarly known as the Wagner Act, of July 5, 1934.22 Time and your patience will not permit a review of its provisions. It was ably

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20 49 STAT. 449 (1935), 9 F. C. A. Tit. 29, § 151.
22 49 STAT. 449 (1935), 9 F. C. A. Tit. 29, §§ 151 et seq.
discussed in the paper read by Harry H. Byrer at the last annual meeting of the West Virginia Bar Association at White Sulphur Springs on September 17, 1937. The provision of the Wagner Act of interest in the present connection is its definite recognition and even encouragement of the strike as a weapon of industrial warfare. Section 13, consisting of only two lines, provides:

"Nothing in this chapter shall be construed so as to interfere with or impede or diminish in any way the right to strike."

Unlike the Railway Labor Act, which provides machinery for the purpose of avoiding industrial conflict by means of conference, conciliation, mediation and voluntary conference, the National Labor Relations Act makes no provision for the protection of the rights or interests of employers, but in terms encourages and in practice promotes resort to the strike.

SUGGESTED AMENDMENTS TO THE NATIONAL LABOR RELATIONS ACT

There has been extensive criticism, both in Congress and in the press of the country, of the partisan attitude of the National Labor Relations Board created by the Act. The charge has been made that the Board and its trial examiners have not acted as impartial judges of disputes between employers and employees' unions, but rather as prosecutors of employers. Senator Nye is reported to have said that the Board had "such a pronounced pro-C. I. O. basis that the average man regards it as an adjunct." Any open-minded man must concede there is fair room for criticism. The great power asserted by the Board was illustrated recently by its opinion in the National Electric Products Corporation case in Pennsylvania. The district court of the United States for the western district of Pennsylvania had decreed that a contract between the corporation and the International Brotherhood of Electrical Workers, an affiliate of the American Federation of Labor, was valid and had ordered the corporation specifically to perform it. Subsequently, upon a complaint filed with the Board by the United Electrical and Radio Workers of America, an affiliate of the C. I. O., charging that the corporation was engaging in unfair labor practices in its perform-

26 CCH Labor Law Service, Par. 21, 532 (d).
ance of this contract, the Board held that the Wagner Act gave it exclusive jurisdiction to determine the validity of the contract, and that the decree of the district court was no bar to the Board’s exercising such jurisdiction or to the making of an order by the Board invalidating the contract. The Board ordered the corporation to post immediate notice to its employees that the corporation’s contract with the Brotherhood “is void and of no effect,” and ordered an election among the employees to determine whether the Brotherhood or the rival C. I. O. affiliate should represent the employees in dealing with the employer. This, it is submitted, is an arrogation of power never asserted by any other board or commission created under an Act of Congress. Neither the Interstate Commerce Commission nor the Federal Trade Commission nor any other creature of the legislative department of the national government has, so far as I know, asserted power to disregard and override the judgments of the courts.

But more important than the question whether the Board and its trial examiners are performing their duties under the Wagner Act in a judicial or an arbitrary spirit, is the question whether the terms of the Act itself are such as to make possible a judicial consideration of its problems by the Labor Board, or whether the Act does not by its very nature make a partisan attitude inevitable. It has been pointed out that the only “unfair labor practices” listed in the act are practices by employers. No act of the unions is declared to be an unfair labor practice. It is unfair practice for employers not merely to coerce but even to “encourage or discourage membership in any labor organization.” But if a union resorts to intimidation of no matter how flagrant a character in order to induce membership therein, the Labor Board is not authorized by the act to take cognizance of the matter. In short, while it can find an employer guilty of violating the act, it can neither try nor sentence a union or its members.

The Wagner Act is essentially a punitive statute. Under the procedure which it establishes, the Board and its agents become not only judges but investigators and prosecutors,—as pointed out by Mr. Byrer.

It is easy to understand why the act has failed of its purpose to promote industrial peace, if indeed this was its purpose. There are others besides Senator Nye who believe it was passed to further the interests and strengthen the hand of the Committee for In-
dustrial Organization, headed by John L. Lewis. The recent strikes in the steel industry give point to the argument. In a late article by George Sokolsky\textsuperscript{27} the author states that he has it on good authority that since the C.I.O. came into existence, coal miners have paid into the C. I. O. in dues and special assessments a total of $7,000,000, which has been employed to finance strikes in industries other than coal. An interesting commentary on present labor legislation is that while it is a felony to move strike breakers from one state to another, there is no restriction upon the similar movement of pickets and labor agitators.\textsuperscript{28} In fact, it appears that many of the most active fomenters of recent strikes have been inhabitants of states other than that in which the strikes occurred and members of unions representing trades different from that in which the striking employees are engaged. Thus many of the most active participants in the recent steel strikes were members of the United Mine Workers of America.

A side-light upon the reason underlying the demand of Mr. Lewis for a written agreement with the steel industry is supplied by Mr. Sokolsky. He points out that the written agreements demanded by Lewis with all the dozen steel companies involved were to expire on February 28, 1938. (It is to be remembered that while the Wagner Act calls for collective bargaining, it does not call for a written or signed agreement.) The steel men asserted that John L. Lewis was seeking to produce in steel a condition that already exists in coal,—where all wage agreements terminate on a certain day, and a general strike in the entire industry can be, and has repeatedly been, called if the agreements are not renewed on his terms. Thus Lewis would hold the whip-hand year after year in steel as in coal. This would place him in a strategic position to demand the check-off from the 500,000 workers in the steel industry. At $12 a year, not counting initiation fees and special assessments, this would give the C. I. O. $6,000,000 a year to finance strikes and further strengthen its organization.\textsuperscript{29}

There can be no industrial peace under federal statutes which make this state of affairs possible. This is so evident that already amendments to the Wagner Act have been suggested by economists and publicists who have studied the situation. It is

\textsuperscript{27} Sokolsky, \textit{The C. I. O. Turns a Page} (Sept. 1937) 160 Atlantic Monthly 309.


\textsuperscript{29} Sokolsky, \textit{supra} n. 27.
obvious that the responsibility of the worker as well as of the employer must be recognized and enforced. In June of this year Senator Vandenberg offered in the United States Senate three simple amendments to the Wagner Act, the propriety of which cannot reasonably be questioned. The substance of the Vandenberg amendments was to make it an unfair labor practice for any person (1) to engage in any strike unless the strike had been voted by a majority of the employees in an appropriate unit for collective bargaining; (2) to engage in any strike for the purpose of inducing any person to violate a contract or any law of a state or of the United States; (3) to interfere with the free exercise of any right or privilege secured by the Constitution or the laws of the United States. Unions found guilty of violating these provisions would be forbidden to collect dues, assessments or contributions during a specified period. The Vandenberg amendments were not passed by Congress. Clearly, they do not go far enough to meet the existing situation.

Other provisions which nearly all fair-minded students of the subject agree should be incorporated into our federal labor legislation, either by amendment of the Wagner Act or by the passage of a new act dealing with the subject, include the following:

1. The incorporation of labor organizations. With the immense power which they exercise, there should go a measure of responsibility, which can best be accomplished by incorporation under a charter setting forth the rights and obligations of the union.

2. That labor organizations be required to render annual statements of their accounts in such shape that the union members as well as the public may know how its funds are spent.

3. That contributions for political purposes should be made public and should be unlawful unless authorized by at least a majority of the membership of the union.

4. That it be made an unfair labor practice for any organization to coerce or intimidate any employee into joining or refusing to join any labor organization.

5. The "peaceful picketing" legalized by Section 20 of the Clayton Act of 1914 and enlarged by the Norris-La Guardia Act of 1932 should be limited, as it has been in England,30 so as to

30 Supra n. 3.
make picketing unlawful where the pickets attend in such numbers or act in such manner as to be calculated to intimidate those in possession of the place being picketed or to obstruct entrance there- to or to lead to a breach of the peace.

Above all, the alien practice recently imported from France and applied effectively in the automobile and steel strikes, known as the sit-down strike, should be branded as an unfair labor practice and made punishable by statute as the trespass which it clearly is.

With a word as to the grave problem presented by the sit-down strike, which challenges deliberate consideration of the lawyers of the country, I am through. It is a remarkable fact that the sit-down strike has found in high place not only its apologists but its advocates. It is not surprising that a writer of communistic slant, like Louis Adamic, should express the view that "The weapon should be sharpened by the C. I. O. and used fully." Nor is it remarkable that a director of the C. I. O. like John Brophy, or that the periodicals published by the labor unions should give such tactics a more or less qualified approval. But what does arrest attention is such a statement as that made on January 26, 1937, by the Secretary of Labor, Miss Perkins, that "The legality of the sit-down strike has yet to be determined." Still more strange, to lawyers, is the view expressed by James M. Landis in an address before the Harvard Club of Boston on March 17, 1937, who, after conceding that the sit-down strike "finds itself with doubtful traditional legal justification," said:

"The eventual outcome of such a claim will depend in part upon the emphasis that law will give to the concept of property and its inviolability in its industrial and corporate setting to economic pressure of this type, and in part, perhaps, on the capacity of our law to devise new concepts and mechanisms to meet the needs out of which this type of economic pressure has been born."

The gentleman who thus closed his eyes to the construction which the courts, since Magna Carta, have given to constitutional and legislative guaranties of property, both in England and this country, was then chairman of the Federal Securities and Exchange Commission and is now Dean of the Harvard Law School.

Henry T. Hunt, counsel of the National Resources Committee, is reported of the opinion that the law on the subject of sit-down

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31 Landis, Control of the Sit-down Strike (1937) 1 Editorial Research Reports 239-241.
strikes is in a state of emergence and "it is too simple just to say that a sit-down strike is illegal and let it go at that."32 And we find another schoolman, Leon Green, Dean of the Northwestern University School of Law, recently announcing that the sit-down strikers, if they refrain from fraud and violence, are not trespassers, but remain "employees with all their relations intact."33 Since no authority tending to sustain the legality of the sit-down type of trespass can be found in our common law jurisprudence, it is a not unreasonable inference that its advocates rely upon Russian precedents.

On the other hand, there has been a much more accurate and open appraisal of the situation by labor itself. Thus, John Frey, head of the Metal Trades Department of the A. F. of L., in February, 1937, after pointing out that the deadly menace of the sit-down strike, not only to employers but to organized labor, lies in the power which it gives an organized minority to impose its will upon the majority of the workmen employed in any plant or in any industry, soundly said:

"The theory and practice of the so-called militant minority has the hallmark of Moscow and was imported from Russia.
"The sit-down strike and the control of labor policy by a militant minority are deliberately intended to destroy self-government by trade unions and set aside the principles of democratic self-government upon which the American trade union movement has been built up."34

And Senator Borah, upon the floor of the Senate, in reply to Mr. Landis' statement above referred to, said:

"I suppose it is dangerous to prophesy as to what legal concept eventually will be imposed in our system of legal jurisprudence, but I cannot conceive of any legal concepts which would make legal a sit-down strike."35

Representative Sumners of Texas, the able Democratic Chairman of the House Judiciary Committee, said in the same connection:

"If there should be a development of that sort, it would only be as a part of a period of governmental and economic anarchy."

32 Id. at 246.
33 Ibid.
34 Id. at 238.
35 Id. at 240.
LABOR AND THE LAW

No lawyer will doubt for a moment the accuracy of the statement of the law made by Dean Dinwoodey that "under well settled principles of property law, the employer has a legally protected right to the exclusive possession of his factory or plant, just as the householder has to the exclusive possession of his home," and that "although a person may have lawfully entered upon another's property, if he remains after the owner requests him to leave, he is a trespasser under the rules of law governing the defense of property from wrongful intrusion." As Senator King put it in a speech in the Senate on March 17, 1937, strikers who hold the property of another for the purpose of compelling him to grant their demand as a condition of surrendering that which is his, are plainly guilty of extortion: "They have, in effect, kidnapped a plant, and hold it for ransom.

Such is settled law in West Virginia. Our court in Angel v. Black Band Consolidated Coal & Coke Co., held in construing the usual rental contract between a coal company and its employees, that when the employee ceases to work for the company (strikes), his right to occupy the company house also ceases, and if he remains in possession after demand therefor, he becomes a trespasser and the landlord has the right to reenter and remove his goods without legal process where this is done without violence or a breach of the peace. And it has never been doubted that the employer is entitled to prompt and effective orders of the courts, backed by the full power of the state, to compel restoration of possession where the trespasser resorts to force or violence.

In West Virginia, as in most states, trespass is made by statute a criminal as well as a civil offense. Our courts are committed to the proposition that a continuing trespass may be enjoined, and it is, of course, familiar law that the trespasser is liable at law for the damages caused by his unlawful act. In the suits which grew out of the occupation of the automobile factories in Detroit in March of this year, little argument or pretense was submitted by counsel for the strikers that their possession of the plants and factories of their employers was lawful. In the Chrysler case, Judge Campbell on March 15th, in considering the argument that the automobile companies had violated the provisions of the National Labor Relations Act and the answering contention that the

37 (1937) 1 Editorial Research Reports 239.
36 96 W. Va. 47, 122 S. E. 274 (1924).
act was unconstitutional, refused to pass upon its constitutionality, holding that “If it is valid, it can hardly be contended that failure to abide by its terms gives the defendants the right to seize and appropriate $50,000,000 worth of property of the plaintiff and to prevent by threats of violence any use of the property by the plaintiff or its agents.”

The question which arrests our attention as lawyers is not any doubt as to the legality of the sit-down strike. That it is illegal, by any standards with which we are familiar, is beyond fair debate. What vitally concerns us is a much deeper question than this, a much more ominous one than the necessity for amending our labor laws. The thing that imperils us is the defiant disregard by that large body of labor for which the C. I. O. speaks of the statutes and laws which we now have and of the decrees of the courts of the land made for the purpose of enforcing them. Remember that evacuation of the Chrysler plants at Detroit in March, 1937, by the 6,000 sit-down strikers who held them under orders from the C. I. O., was not made pursuant to the orders of the state courts requiring immediate surrender of the plants by the strikers and delivery of possession thereof to their owners, but only upon the order of John L. Lewis, Chairman of the Committee for Industrial Organization, not issued until Mr. Chrysler, as the price of it, had agreed with Mr. Lewis that no attempt would be made by the owners to operate their plants and no machinery would be moved out of them for operation elsewhere pending the conclusion of negotiations for settlement of the strike. The mild disapproval of the President of the United States, expressed in the words of the dying Mercutio—“A plague on both your houses”—brought from Mr. Lewis stern reproof in terms which reminded the President that joint disapproval of both strikers and employers ill became one who had experienced the hospitality of labor’s house and supped at labor’s table.

Great power is a strong draught and labor has drunk deep of it in recent days. The result is that its leaders have been afflicted with a vertigo of omnipotence which has frightened politicians and dazed the public. In this turmoil it is imperative—as it has been more than once before—that the lawyers and the judges of the country be neither terrorized nor confused. Regardless of political affiliations, irrespective of economic views, uninfluenced by the nature of individual practice, the bar can hold no traffic
with any philosophy or any class which practices or advocates open defiance or studied and concerted disregard of the judgments of the courts. We know better than anyone else that when the authority of the courts is destroyed, the last bulwark is destroyed and constitutional government is wrecked and ended. In this situation confronting the bench and bar of the country, it is ours to see that assailants of our judicial system do not pass.